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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

RICK WOODS, Individually and On Behalf  
of Others Similarly Situated

Plaintiff,

v.

GOOGLE INC.,

Defendant.

CASE NO. 5:11-CV-01263-EJD

**DEFENDANT GOOGLE INC.'S  
RESPONSE TO PLAINTIFFS'  
ADMINISTRATIVE MOTION TO FILE  
UNDER SEAL**

1 Pursuant to N.D. Cal. Civ. L.R. 7-11 and 79-5, defendant Google Inc. (“Google”) hereby  
2 responds to Plaintiff’s Administrative Motion To File Under Seal Plaintiff’s Motion for Sanctions  
3 for Violating Court Order (Dkt. 150). Defendants seek to seal (1) portions of Plaintiff’s Motion for  
4 Sanctions for Violating Court Order (“Plaintiff’s Motion for Sanctions”), and (2) exhibits attached  
5 to the Declaration of Andrew G. Pate in Support of Plaintiff’s Motion for Sanctions (Dkt. 150-1)  
6 (the “Pate Declaration Exhibits”) (together, the “Sealed Materials”):

- 7 a. **Pate Declaration Exhibit L** (Letter from Eric B. Evans to Brad Seidel dated June  
8 28, 2013 providing information about Google database tables);
- 9 b. **Pate Declaration Exhibit M** (Letter from Eric B. Evans to Brad Seidel dated July  
10 10, 2013 providing information about Google database tables); and
- 11 c. **Pate Declaration Exhibit R.**

12 Google has designated the Sealed Materials as Highly Confidential-Attorneys’ Eyes Only  
13 under the Stipulated Protective Order (modified by the Court) (Dkt. 103) as it relates to confidential  
14 and commercially sensitive information about Google’s data retention and storage, the mechanics of  
15 Google’s pricing system for advertisements, the development of its proprietary advertising system,  
16 and the operation of that proprietary advertising system. The Court previously granted Google’s  
17 request to seal similar information on the same bases (Dkt. 146).

18 Google is concurrently filing a declaration in support of its sealing requests and a proposed  
19 order listing each document sought to be sealed and the specific support for each request.

## 20 **I. LEGAL STANDARD**

21 Rule 26(c) of the Federal Rules of Civil Procedure provides broad discretion for a trial court  
22 to permit sealing of court documents for, inter alia, the protection of “a trade secret or other  
23 confidential research, development, or commercial information.” Fed. R. Civ. P. 26(c)(1)(G). The  
24 Ninth Circuit has “carved out an exception to the presumption of access to judicial records for a  
25 sealed discovery document [attached] to a nondispositive motion,” where the requesting party  
26 shows good cause exists to keep the records under seal. *Navarro v. Eskanos & Adler*, 2007 U.S.  
27 Dist. LEXIS 24864, at \*6 (N.D. Cal. March 22, 2007) (citing *Kamakana v. City & Cnty of*  
28 *Honolulu*, 447 F.3d 1172, 1180 (9<sup>th</sup> Cir. 2006) (“[A] ‘particularized showing’ under the ‘good

1 cause' standard of Rule 26(c) will 'suffice[] to warrant preserving the secrecy of sealed discovery  
2 material attached to nondispositive motions."); *see also Pintos v. Pacific Creditors Assoc.*, 565 F.3d  
3 1106, 1115 (9th Cir. 2009) ("In light of the weaker public interest in nondispositive materials, we  
4 apply the 'good cause' standard when parties wish to keep them under seal.").

## 5 **II. GOOD CAUSE EXISTS TO SEAL GOOGLE'S CONFIDENTIAL** 6 **INFORMATION**

7 The redacted portions of the Sealed Materials contain confidential and commercially  
8 sensitive information about Google's data retention and storage, including information about the  
9 mechanics of Google's pricing system for advertisements, communications regarding the  
10 development of its proprietary advertising system, and details about the operation of that proprietary  
11 advertising system, including the way that advertisements are targeted and placed. Google  
12 designated the foregoing information "Highly Confidential-Attorneys' Eyes Only" under the  
13 Protective Order.

14 As Google's separately filed declaration demonstrates, Google kept the Sealed Materials  
15 confidential and the public disclosure of this information would cause Google harm by giving third  
16 parties (including individuals responsible for competitive decision-making) insights into  
17 confidential and sensitive aspects of Google's data retention, strategies pricing, and placement of  
18 advertisements, allowing these third-parties to potentially gain an unfair advantage in dealings with  
19 and against Google. This type of information is regularly sealed because of its confidential and  
20 commercially sensitive nature. *See In re Electronic Arts, Inc.*, 298 Fed. Appx. 568, 569 (holding  
21 that "pricing" information "plainly falls within the definition of trade secrets"); *see also Apple, Inc.*  
22 *v. Samsung Electronics Co., Ltd.*, 2012 WL 3283478 at \*10 (N.D. Cal. Aug. 9, 2012) (sealing all  
23 records related to pricing); *TriQuint Semiconductor, Inc. v. Avago Techs., Ltd.*, 2011 WL 4947343 at  
24 \*7 (N.D. Ariz. Nov. 1, 2011) (sealing records relating to pricing).

25 In addition, good cause exists to seal confidential information relating to a company's  
26 internal business strategies and policies, including confidential analysis of the effectiveness of a  
27 given product or practice. *See Fed. R. Civ. Proc. 26(c)(1)(G)* (permitting sealing of "a trade secret  
28 or other confidential research, development, or commercial information"); *In re Electronic Arts,*

1 *Inc.*, 298 Fed. Appx. at 569 (recognizing that it is an abuse of discretion to order disclosure of  
2 “any . . . compilation of information which is used in one’s business, and which gives him an  
3 opportunity to obtain an advantage over competitors who do not know or use it”); *Krieger v.*  
4 *Atheros Commn’s, Inc.*, 2011 U.S. Dist. LEXIS 68033 at \*3-4 (N.D. Cal. June 25, 2011) (holding  
5 that a company could seal a presentation that contained “sensitive and confidential information,  
6 including . . . discussions of business strategy”).

7 **III. CONCLUSION**

8 For the foregoing reasons, Google respectfully requests that this Court order the portions of  
9 the Sealed Materials identified in its declaration to be placed under seal. In accordance with Civil  
10 Local Rule 79-5(d), a proposed order granting Defendants’ Response to Plaintiff’s Administrative  
11 Motion to Seal has been lodged with the clerk in hard copy and served on counsel for Plaintiff.  
12 Google directs the Court to the public redacted version of the Sealed Materials (Dkt. 150), which  
13 Plaintiff filed on May 14, 2014, and the unredacted version of certain Sealed Materials (Dkt. 150-1),  
14 which Plaintiff lodged conditionally under seal on May 14, 2014.

15  
16 Dated: May 19, 2014

MAYER BROWN LLP.

17 /s/ Eric B. Evans.  
18 EDWARD D. JOHNSON  
19 ERIC B. EVANS  
20 JONATHAN A. HELFGOTT

*Attorneys for Defendant Google Inc.*